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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/593,751

06/11/2007

Murray Edward Bruce Leighton

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7590

12/19/2008

DAY PITNEY LLP

ACCOUNT: ILLINOIS TOOL WORKS INC.

7 TIMES SQUARE

NEW YORK, NY 10036-7311

EXAMINER

GERRITY, STEPHEN FRANCIS

ART UNIT

PAPER NUMBER

3721

MAIL DATE

DELIVERY MODE

12/19/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/593,751

Applicant(s)

LEIGHTON, MURRAY EDWARD  
BRUCE

Examiner

Stephen F. Gerrity

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/5/07, 4/2/07</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### **Response to Preliminary Amendment**

1. Receipt is acknowledged of a preliminary amendment, filed 22 September 2006, which has been placed of record and entered in the file.

### **Priority**

2. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. § 119. The certified copy has been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

### **Information Disclosure Statement**

3. Receipt is acknowledged of Information Disclosure Statements, filed 5 February 2007 and 2 April 2007, which have been placed of record in the file. An initialed, signed and dated copy of each of the PTO-1449 forms is attached to this Office action.

4. The information disclosure statement filed 5 February 2007 and 2 April 2007 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered as indicated by the foreign documents being crossed-through.

### **Specification**

5. The disclosure is objected to because:

- page 2, line 9, "zipper" should be changed to --slider--;
- page 4, line 14, "zipper" should be changed to --slider--;

Art Unit: 3721

- page 7, line 34, the phrase "...length 58 is from..."; and
- the written description lacks the appropriate section headings customarily found in a U.S. patent applicant as provided in 37 CFR 1.77(b), which are:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Appropriate correction is required.

### **Claim Rejections - 35 USC § 112**

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 1-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1, line 16, the limitation “means for mounting sliders on the zipper ...” is interpreted as an attempt by applicant to invoke a 35 USC 112, 6<sup>th</sup> paragraph “means-plus-function” limitation. The examiner deems this to be an improper use of “means plus function” language because the specification fails to provide disclosure of the structure intended to correspond to the “means plus function” limitation. The discussion at page 6, lines 15-21, makes reference to a per se known slider applicator obtainable from Supreme Plastics Limited, and which it is assumed applicant intends to be the “corresponding structure” for the means for mounting sliders on the zipper. The precise structure of the per se known slider applicator cannot be easily ascertained by a skilled artisan as no model number or further description is provided. Furthermore, it is conceivable that the per se known slider applicator could have any number of different structures. Thus, a skilled artisan would not be able to make and use the claimed invention.

As stated in MPEP 2185:

If a “means or step plus function” limitation recited in a claim is not supported by corresponding structure, material or acts in the specification disclosure, the following rejections should be considered:

(A) under 35 U.S.C. 112, first paragraph, as not being supported by an enabling disclosure because the person skilled in the art would not know how to

Art Unit: 3721

make and use the invention without a description of elements to perform the function.

It is suggested that the "means for mounting sliders on the zipper ..." limitation be amended so as not be such that 35 USC 112, 6<sup>th</sup> paragraph is invoked.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-13 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 6, "the axis of the cylinder" lacks proper antecedent basis -- it is suggested that such be changed to --an axis of rotation--.

Claim 1, lines 7 and 9, the use of the pronoun "its" renders the claim vague and indefinite because it is unclear precisely to what "its" is referring.

Claim 1, line 16, applicant makes use of the language "means for mounting sliders" which is deemed indefinite for the reasons set forth above in the rejection under 35 USC 112, 1<sup>st</sup> paragraph - see MPEP 2185.

Claim 2, line 2, "zipper applicator" should be changed to --slider applicator--.

Claim 7, line 2, the recitation "produces zipper having" should perhaps be changed to --produces a zipper--.

Claim 7, line 2, the use of the pronoun "its" renders the claim vague and indefinite because it is unclear precisely to what "its" is referring.

Claim 12, line 1, the language "the device a pair" is confusing and renders the claim vague and indefinite.

Art Unit: 3721

Claim 16, line 2, "zipper applicator" should be changed to --slider applicator--.

These and any other informalities should be corrected so that the claims may particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required by 35 U.S.C. § 112, second paragraph.

### **Claim Rejections - 35 USC § 102**

**10.** The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**11.** Claims 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Fraser (US 1,960,580).

The Fraser reference discloses a pair of convex shaped rollers 17, 17 in figure 5. The rollers are adjustably mounted as discussed beginning at page 2, line 133 of Fraser. The Fraser rollers are fully capable of performing the functional recitations found in claim 12 concerning having a zipper pass there through and to engage the zipper profiles and to separate from each other to allow the sliders to pass there between. These recitations in claim 12 are functional and statements of the intended use of the roller device, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Art Unit: 3721

**12.** Claims 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by DeBolt et al. (US 5,319,430).

The DeBolt et al. reference discloses a pair of convex shaped rollers 34, 36 in figure 2. The rollers are adjustably mounted as seen by the arrow 63 in figure 1 of DeBolt et al.. The DeBolt et al. rollers are fully capable of performing the functional recitations found in claim 12 concerning having a zipper pass there through and to engage the zipper profiles and to separate from each other to allow the sliders to pass there between. These recitations in claim 12 are functional and statements of the intended use of the roller device, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

### **Claim Rejections - 35 USC § 103**

**13.** The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**14.** Claims 1, 4-11, 14, 15 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leighton (GB 2,349,603) in view of Buchman (US 6,588,176).

Regarding claims 1, 14 and 17, the Leighton reference discloses an apparatus and method for applying pre-cut lengths of zipper transversely to a web 24 and to then feeding the web including the zippers to a form/fill/seal machine. The Leighton



Art Unit: 3721

reference does not teach that the zipper has a slider mounted thereon. The Leighton reference teaches the use of a rotary driven turret 20 including grooves (formed from guides 28, 30) for receiving the pre-cut lengths of zipper, and that a heated sealing bar 36 is used to remove the pre-cut lengths of zipper from the grooves of the turret and to attach the zippers to the web in a transverse manner to the direction of movement of the web 24. The Leighton reference teaches structure which is deemed to meet all of the various mean-plus-function limitations recited in claim 1 and thus meets all of applicant's claimed subject matter with the exception of the means for mounting sliders on the zipper.

The use of zippers including sliders is notoriously old and well known in the relevant art in order to form reclosable bags in which the slider is use to separate interlocking profiles. It is also notoriously old and well known in the art for reclosable zippered bags to be formed with or without a slider mounted on the zipper.

The Buchman reference teaches a similar type of apparatus and method for transversely attaching zippers including a slider mounted thereon, in which, the slider is applied to the zipper before the zipper is pre-cut and then attached to the web as is seen in figure 4. The structure disclosed in Buchman for mounting the sliders to the zipper is deemed to be equivalent to the structure disclosed by applicant as corresponding to the claimed "means for mounting sliders on the zipper".

It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Leighton apparatus and method by having included the means for mounting sliders on the zipper, as disclosed by

Art Unit: 3721

Buchman, for the purpose of providing a consumer with a finished bag which includes a slider mounted on the zipper to make opening/closing of the reclosable zipper easier. Furthermore, it is routine for a skilled artisan to combine the teachings and structure of old and well known devices and methods when such a combination would achieve predictable and successful results.

Concerning claims 4 and 5, it would have been an obvious matter of engineering choice to change the shape of the grooves in order to accommodate the slider mounted on the zipper in the now modified Leighton apparatus, since such a modification would have involved a mere change in the shape or form of a component. A change in shape or form is generally recognized as being within the level of ordinary skill in the art. In re Dailey, 149 USPQ 47 (CCPA 1976).

Concerning claims 6 and 15, the Leighton machine discloses a heated sealing bar 36 which is moved toward and away from the film and is located adjacent the attachment location of the zipper and on an opposite side of the web than the turret.

Concerning claims 7, 8 and 18, the Buchman reference teaches a roller nip 165 which would have been obvious to combine with the Leighton machine in order to feed the zipper and slider to the groove of the turret. Furthermore, to have made the roller nip adjustable to allow the slider to pass there through would have been obvious to a skilled artisan in order to prevent damage to the roller nip. Concerning the roller surfaces being convex, it would have been an obvious matter of design choice to have had the roller surfaces be convex, since applicant has not disclosed that having a

Art Unit: 3721

convex roller surface solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with non-convex roller surfaces.

Concerning claims 9 and 19, the form/fill/seal machine is disclosed by Leighton.

Concerning claims 10, 11, 20 and 21, the examiner takes Official Notice that it is notoriously old and well known in the relevant art to have a machine to receive a zippered web and to convert the zippered web into bags which are subsequently filled, or to have a roll onto which a zippered web may be attached for subsequent use in making bags or for use in a form/fill/seal machine. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have further modified the Leighton machine for forming a zippered web to have had a machine arranged to receive the zippered web and convert the zippered web into bags which are subsequently filled, or to attach the zippered web to a roll for subsequent use in making empty bags or for use in a form/fill/seal machine. It being routine for a skilled artisan to apply the teachings of notoriously old and well known machines and methods to other technology open for similar use and improvement. Such a modification would provide multiple uses for the zippered web formed by the modified Leighton machine and method.

**15.** Claims 2, 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 14 above, and further in view of applicant's admitted prior art.

Concerning claims 2 and 16, the Leighton apparatus, as modified by Buchman, does not expressly disclose that the means for mounting the slider to the zipper is a

Art Unit: 3721

rotary slider applicator, but applicant admits that rotary slider applicators for mounting a slider to a zipper are old and well known as discussed at page 6 of the present application. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have further modified the Leighton apparatus to have made use of a rotary slider applicator as the means for mounting the sliders on the zipper. It being routine for a skilled artisan to combine the teachings and structure of old and well known devices and methods when such a combination would achieve predictable and successful results.

Concerning claim 3, the Leighton reference discloses a knife 18 located just before the zipper is fed into the groove of the turret.

### **Conclusion**

**16.** The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references listed on the attached form (PTO-892) are cited to show machines and methods for mounting sliders and zippers, and for making packages and bags. All are cited as being of interest and to show the state of the prior art.

**17.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Gerrity whose telephone number is 571-272-4460. The examiner can normally be reached on Monday - Friday from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3721

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen F. Gerrity/  
Primary Examiner, Art Unit 3721

18 December 2008